

1 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

2 IN AND FOR THE COUNTY OF YAVAPAI

3 STATE OF ARIZONA,

4 Plaintiff,

6 vs.

7 STEVEN CARROLL DEMOCKER,

8 Defendant.

SUPERIOR COURT
COUNTY OF YAVAPAI

2011 OCT 11 AM 8:35

SANDRA K MARKHAM, CLERK

BY: *[Signature]*

ORIGINAL

No.

P1300CR2010-01325

11 BEFORE: THE HONORABLE DAVID L. MACKEY
12 JUDGE OF THE SUPERIOR COURT
13 DIVISION 1
14 YAVAPAI COUNTY, ARIZONA

15 PRESCOTT, ARIZONA
16 FRIDAY, AUGUST 12, 2011
17 9:03 A.M. SESSION

19 REPORTER'S TRANSCRIPT OF PROCEEDINGS

20 Hearing Re: Trial

23 LISA A. CHANEY, RPR, CSR, CR
24 Certified Reporter
25 Certificate No. 50801

ORIGINAL

A P P E A R A N C E S

On Behalf of the Plaintiff:

Yavapai County Attorney
By: Mr. Jeff Paupore, Deputy
Mr. Steven Young, Deputy
Mr. Dennis McGrane, Deputy
255 E. Gurley Street
Prescott, Az 86301

On Behalf of the Defendant:

DeRienzo & Williams
By: Mr. Craig Williams, Attorney at Law
Mr. Greg Parzych, Attorney at Law

Also Present:

Ms. Charlotte DeMocker, Victim

FRIDAY, AUGUST 12, 2011
9:03 A.M. SESSION

(Appearances as heretofore noted.)

09:03AM THE COURT: This is CR2010-01325. State of
Arizona versus Steven DeMocker.

If I could have counsel announce your
appearance, please, starting with the State.

09:04AM MR. PAUPORE: This is Jeff Paupore, Deputy
County Attorney.

MR. YOUNG: Deputy County Attorney, Steven
Young.

MR. McGRANE: Dennis McGrane for the State.

09:04AM MR. WILLIAMS: Craig Williams for
Mr. DeMocker.

MR. PARZYCH: And Greg Parzych on behalf of
Mr. DeMocker.

09:04AM THE COURT: I should note that Mr. DeMocker
is present in custody. This is the first criminal case
this morning for this Court so I want to make the
admonition to the victims or any victims.

09:04AM If you are the victim of a crime with a case
pending before this Court you are advised that you have
rights to justice and due process under Arizona Law
that, among others, include the right to be treated with

1 fairness, respect, and dignity, to a speedy trial and a
2 prompt and final conclusion of the case, to be present
3 in Court proceedings, to choose whether or not to be
4 interviewed by the Defendant or the Defendant's
09:04AM 5 attorney, to be heard before the Court makes a decision
6 on release, negotiation of a plea, scheduling, and
7 sentencing, and to receive restitution from a person who
8 is convicted of causing your loss.

9 If you have not already been provided with a
09:05AM 10 written statement of all victim's rights, please contact
11 the Victim Services Division of the Prosecutor's office.

12 I had originally set this hearing -- I think
13 I had the minute entry prepared Monday afternoon and
14 issued it Tuesday, and had not had an opportunity to see
09:05AM 15 the flurry of paper that was filed by both sides on
16 Monday. My initial intent or original intent was to
17 meet with the parties and counsel to discuss potential
18 reassignment of this case from Judge Darrow as well as
19 whether or not we might be able to bring in a visiting
09:06AM 20 Judge for a 17.4 Hearing to try and discuss this matter,
21 and I say a visiting Judge on that matter not because
22 that's what I'm intending with the rest of the
23 reassignment, but because I thought fresh -- totally
24 fresh eyes on that might assist in trying to bring about
09:06AM 25 a resolution. So I wanted to talk with counsel about

1 that now in light of the fact that I've seen that
2 there's at least one side who's indicating that they're
3 not ready to go to trial on September 7th.

4 My intent was today, initially, again, to
09:06AM 5 try and discuss ways that we might be able to bring
6 about a reassignment of this case to another Judge and
7 still keep the existing trial date or at least near that
8 existing trial date.

9 I thought that's where everybody was headed
09:07AM 10 as of the end of last week, but it doesn't appear that
11 that's the case. So let me at least hear briefly from
12 counsel for each side on trial preparation.

13 I note that while there are pending motions
14 from the Defense with respect to the disclosure that at
09:07AM 15 least the disclosure statements that I've reviewed from
16 both the State and the Defense reveals that there were a
17 number of experts disclosed by the Defense on Monday and
18 I don't know whether those are totally new and
19 surprising to the State such that you have concerns
09:07AM 20 about being ready for trial on the current date, but I
21 would at least like to get a realistic assessment from
22 both sides as to whether pushing for the September 7th
23 trial date is realistic and that will help me evaluate
24 how to go about deciding whether there will be a
09:08AM 25 reassignment or not.

1 I think it's really clear right now, and I
2 imagine that the words out there in the public eye that
3 we are going to be reassigning Judge Darrow, but not
4 necessarily from this case, and that may be one of the
09:08AM 5 options is to keep Judge Darrow on this case even though
6 we're changing his other judicial assignments but we
7 wanted to look at that in light of the fact that he has
8 just come off of a fairly lengthy trial and portions of
9 that case are still not yet resolved and starting
09:08AM 10 another lengthy trial is a bit much to ask any Judge.
11 If the trial date's not going to happen on the 7th of
12 September, that may change his perspective as well on
13 it.

14 So where's the State with respect to the
09:09AM 15 disclosures that were made on Monday in preparation of
16 the September 7th trial date?

17 (Whereupon, Mr. Paupore and Mr. Young
18 confer off the record.)

19 MR. PAUPORE: Your Honor, we did receive a
09:09AM 20 number of expert witnesses on Monday, some of which we
21 are not familiar with, some of which we are. We need to
22 interview these witnesses, but by reading the pleadings
23 from the Defense, these witnesses do not have the
24 reports ready yet and so we cannot interview Defense
09:10AM 25 experts until we have an idea what they're going to say

1 by virtue of their written reports. Even with that
2 being said, the State is ready to proceed if this trial
3 were to go on September 7th.

4 THE COURT: I noted there was even one
09:10AM 5 listed expert whose name wasn't provided, just an area
6 of expertise to be disclosed at a later date. Even with
7 that possibility -- I realize there may be arguments
8 about whether that's an appropriate disclosure, but even
9 with that possibility of yet an unnamed expert to be
09:10AM 10 disclosed at a future date.

11 MR. PAUPORE: It is, Your Honor. This, as
12 you know, is scheduled for quite a lengthy trial. We
13 have the schedule that is presently set for three days
14 of trial in one week, four days on the next -- on the
09:11AM 15 next week and then alternating through with a few
16 breaks. One break in October and some breaks for
17 November.

18 So given the length of the trial and those
19 available non-trial dates the State could accomplish
09:11AM 20 what it needs to accomplish with these witnesses once we
21 have their information as to what they're going to
22 testify to and, of course, there will be anticipatory
23 motions probably from either side with respect to the
24 scope of the admissibility of the expert's testimony.

09:11AM 25 THE COURT: One of the possibilities with

1 respect to reassignment is to try and find a Judge
2 who's, essentially, able to clear their calendar and try
3 this case five days a week with possibly some breaks for
4 holidays.

09:12AM 5 I realize that Judge Darrow outlined a
6 three/four plan but if there is a reassignment, the
7 three/four plan may be out the window. There will
8 likely be breaks, but if it was a five day a week trial,
9 does that at all influence the State on whether or not
09:12AM 10 September 7th is realistic in light of the recent
11 disclosures from the Defense and if you want a moment to
12 consult --

13 MR. PAUPORE: Thank you, Your Honor.

14 (Whereupon, Mr. Paupore, Mr. Young and

09:13AM 15 Mr. McGrane confer off the record.)

16 MR. PAUPORE: Thank you, Your Honor, for the
17 opportunity to consult with the other counsel. Even if
18 it were to be a five day a week trial schedule we
19 believe that because of the anticipatory length that we
09:13AM 20 would have time on the weekends and on breaks between
21 trial dates that we could accomplish the interviews.

22 THE COURT: Before I turn to the Defense on
23 both of the issues that I raised initially, anything
24 that you want to tell me about potentially a 17.4
09:13AM 25 Conference before a visiting Judge?

1 MR. PAUPORE: Your Honor, I did have an
2 opportunity -- the State had an opportunity to talk with
3 both Defense counsel earlier this week and again today
4 and both parties are amenable to a settlement
09:14AM 5 conference.

6 We didn't really discuss a visiting Judge
7 but I don't -- you know, I don't think that's going to
8 be an issue. A look with fresh eyes is always a good
9 thing. Of course we would want this visiting Judge for
09:14AM 10 the settlement -- for the 17.4 Settlement Conference to
11 be, you know, as familiar with the record as he possibly
12 can because the record is extensive and it does have --
13 it's going to have some bearing on the parties' posture
14 as to where they stand when we get into negotiations,
09:14AM 15 but we've had some -- the State has had conversations
16 with the Defense, meaningful conversations with regard
17 to this issue, and it's my understanding that both
18 parties are willing to pursue that avenue.

19 THE COURT: Mr. Williams, what would you
09:15AM 20 like to tell me on those issues?

21 MR. WILLIAMS: I'll start with the 17.4
22 Conference. Judge, we're amenable to the 17.4
23 Conference.

24 My question is why can't this Court do the
09:15AM 25 settlement conference if we're going to have another

1 Judge assigned, not that I'm agreeing to that without
2 comment, but my question is why couldn't this Court do
3 it?

4 THE COURT: I will give you a real quick
09:15AM 5 answer to that. It's because I'm one of the few judges
6 still on the list of sitting judges here in Yavapai
7 County who could possibly try this case and I don't want
8 to take myself out of that mix given the history of the
9 case for a 17.4. That's not meaning that I haven't
09:15AM 10 considered that possibility and I am -- well, somewhat
11 familiar with the file, but that's the short answer to
12 that.

13 MR. WILLIAMS: Okay. Well, for the record
14 then, we have no objection to you, this Court, doing the
09:16AM 15 settlement conference if that's what you decide to do
16 and we have no objection to a settlement conference for
17 all of the reasons that Mr. Paupore stated.

18 The reason that you got the amount of
19 material that you got on Monday was because Judge Darrow
09:16AM 20 had set a deadline of August 8th and, frankly, we were
21 hoping for some decision on our Motion to Dismiss,
22 Motion to Disqualify before August 8th and that didn't
23 come and so we all had to observe that deadline and so
24 if you've read my request for a stay, request for a
09:16AM 25 continuance, we just -- for instance, I'll just take one

1 area, there's a blood splatter expert that the State has
2 disclosed.

3 We don't have one and we've got to find one.
4 That's why when you say it may or may not be proper
09:17AM 5 disclosure, well, we don't have anybody yet so we got to
6 find somebody, give them the reports, get them familiar
7 with the case, then disclose them, disclose the report.
8 So that's why that was the way it was.

9 Going onto the five day a week trial date,
09:17AM 10 we just can't do that. We are -- Mr. Parzych and
11 myself, Ms. Rendon, Mr. Robertson and paralegal, Kathy
12 Williams, that's our entire staff. If you saw the jail
13 -- just the jail calls in this case, we had to hire an
14 outside person just to handle the jail calls.

09:17AM 15 We can't do a five week trial. We just --
16 it's not possible for us to do it. We don't have an
17 army of people like the County Attorney does. So if we
18 need to go file a Motion in Limine about something that
19 comes up in the middle of the trial, we just don't have
09:18AM 20 enough hours in the day for us to be able to do it, and
21 I think that it's an onerous burden to put on the
22 Defense to make us do five days a week.

23 We were comfortable with the three/four
24 because we were going to be able to have some time to be
09:18AM 25 able to go back and regroup and be able to do this. So

1 we would strenuously oppose five days a week.

2 In addition, we don't know where the trial's
3 going to be, if it's going to be over in the Verde, if
4 it's going to be here, who's going to be trying it.

09:18AM 5 We're going to have our opinions on it. If the Court
6 decides you're going to reassign it away from Judge
7 Darrow, we're going to want to make an objection on that
8 and be heard and make a record and do whatever we have
9 to do after that happens.

09:18AM 10 So we anticipated on the Motion to Dismiss,
11 Motion to Disqualify, frankly, that no matter which way
12 that decision went, that there was going to be Special
13 Actions on that. The trial date was not realistic any
14 ways because that's such a critical issue in this case
09:19AM 15 that if we are going to the State with Special Action,
16 we'd have to respond, and they'd have to reply, and vice
17 versa if it went against us. So to me the September 7th
18 date wasn't a realistic date any ways.

19 In addition, without any notice to the
09:19AM 20 Defense, Judge Darrow took a week away from us in the
21 middle of September in order to give that to the Ray
22 case. Now, the State knew about it only by accident
23 because they handle the Ray case too, but we had no
24 notice of that and we just found out by accident that a
09:19AM 25 week had been taken away.

1 So for all of those reasons I just didn't
2 think that the September 7th date was realistic,
3 especially, since we have to be able to get a computer
4 expert. There's all kinds of stuff that they have
09:19AM 5 disclosed and in my motion I didn't say that it wasn't
6 timely because they had until August 8th to do it.

7 What I did say, it was a deluge, and in
8 order for us to keep up we had to be realistic about
9 making sure that Mr. DeMocker has a fair trial by
09:20AM 10 competent counsel who are prepared and with a deluge
11 that just cannot happen, Judge. So that's my position.

12 Did I cover all of the issues that I needed
13 to?

14 THE COURT: I think so. I think that I have
09:20AM 15 a pretty clear picture at this point.

16 MR. WILLIAMS: Oh, I should add that we
17 oppose Judge Darrow being off the case because
18 Mr. DeMocker had Judge Lindberg who was very familiar
19 with the case and made a lot of rulings, and then Judge
09:20AM 20 Lindberg got sick, it went to Judge Darrow who has now
21 had, what, a year and a half on this case or almost
22 longer and is very familiar with the case and has had
23 hearings concerning the Motion to Disqualify, Motion to
24 Dismiss.

09:20AM 25 We just don't think that you can have

1 hearings on it and then assign it to another Judge.
2 That's our position. So we strongly oppose any
3 reassignment away from Judge Darrow.

4 THE COURT: Found any case law that suggests
09:21AM 5 that the party has a vested right in the assignment of a
6 Judge that a Presiding Judge can't change?

7 MR. WILLIAMS: Well, for instance, if --

8 THE COURT: I understand your concern. I
9 do. I have a similar concern but realistically what can
09:21AM 10 one Judge handle in a year. I think I have to be
11 mindful of that. I'd like the rest of our judges to
12 remain pretty healthy and be able to carry out all their
13 duties and these types of cases take drains on human
14 beings on every side of the bench.

09:21AM 15 MR. WILLIAMS: Well, my position would be,
16 and this is off the cuff, and if the Court orders me to
17 I would even request a chance to brief this out if I
18 need to, let's say that you had a hearing in a case and
19 the Judge is up there and either the State or the
09:21AM 20 Defense is contemplating a 10.2 Motion, but then they
21 have a substantive hearing. Well, they've now waived
22 any 10.2 Motion that they would have had because they've
23 had a substantive motion.

24 The Court heard that the -- we've had
09:22AM 25 substantive motions in this case in front of Judge

1 Darrow. I don't think that it's fair to Mr. DeMocker to
2 get into a point where another Judge is appointed and
3 then we have to go through a 10.2 analysis or a 10.1
4 analysis about how we feel about that Judge or how the
09:22AM 5 State feels about the Judge.

6 And the statute or, excuse me, the rule on
7 point is 19.5 death, illness, or other incapacity of
8 Judge, and what I'm hearing is health, but --

9 THE COURT: No. I'm not about to tell you
09:22AM 10 that I'm forced to reassign it because of Judge Darrow's
11 health. That's not the case. It's being realistic
12 about what anybody should be requested to do in one
13 year's time and as you mentioned there's another case
14 that was quite lengthy that is still going on that's
09:23AM 15 affecting some of your hearings or some of your trial
16 dates and I've got to look at that as the Presiding
17 Judge and make some decisions and one of the decisions
18 that I was going to try and make today was to see if we
19 couldn't come to an agreement on another Judge but I
09:23AM 20 understand your concern.

21 I'm not discounting that and I'm not saying
22 that you wouldn't get a chance to be fully heard on
23 that. I'm just -- I'm not aware of any case law that
24 prohibits a Presiding Judge from reassigning -- from
09:23AM 25 making case reassignments given available resources.

1 The limitation is who's available for that reassignment.

2 MR. WILLIAMS: My last point on the issue is
3 that I believe our cause number is older and our client
4 is in custody so our case should take precedence over
09:23AM 5 the Ray case and the Ray case is by no means over from
6 the rumor mill and what I read about it. It's got a lot
7 of wind left in it. So that's my final point on the
8 matter, Judge.

9 THE COURT: All right. Well --

09:24AM 10 MR. PAUPORE: Your Honor, may I address a
11 point?

12 THE COURT: Go ahead.

13 MR. PAUPORE: The State does not have an
14 objection to a reassignment. Understanding Defense's
09:24AM 15 position with respect to the current trial date that we
16 have right now, they are not prepared to go even with
17 Judge Darrow on the 7th.

18 The State is mindful of the reasons why and
19 we don't think that those -- the issues that are
09:24AM 20 presented to the Defense are unreasonable in support of
21 the motion to continue it and the State does not agree
22 that Judge Darrow has made a substantive ruling on
23 Defense's dispositive Motion to Dismiss or remove the
24 County Attorney's Office from this case.

09:25AM 25 It's at issue as far as the pleadings are

1 done, but we haven't had -- requested oral argument and
2 so Judge Darrow or any Judge for that matter who, once
3 they become familiar with the facts and the law in the
4 case, could hear that motion. Doesn't have to be Judge
09:25AM 5 Darrow but if this Court in weighing the Defense's
6 position of not being prepared for September 7th and
7 balancing the problem that the Presiding Judge has given
8 Judge Darrow's two complex cases in one year and then
9 the necessity to look at alternatives to get this case
09:26AM 10 tried, you know, the State would not object to a
11 continuance with the understanding that the State is not
12 asking for a continuance. The State's prepared to go.

13 On the lines -- a long the lines of a
14 continuance, this Court had instructed parties,
09:26AM 15 primarily the State, to get the wishes of the victim on
16 this issue. I don't know if the Court has had an
17 opportunity to review a letter that we received late
18 yesterday afternoon from Katie DeMocker. We forwarded
19 it to your JA as well as Judge Darrow's JA.

09:27AM 20 Katie DeMocker does oppose a continuance.
21 She wants this case to go forward. I don't really have
22 a good idea of what Charlotte DeMocker's position is.
23 Both Charlotte and Katie's attorneys were contacted by
24 the State. We've had e-mails and exchanges.

09:27AM 25 Quite frankly, we expected -- we were under

1 the understanding that Charlotte DeMocker was going to
2 be here today and speak to the Court and Mr. Young
3 points out that we do have an e-mail from Charlotte's
4 attorney that she's not taking a position on the -- on
09:27AM 5 the issue of a continuance.

6 So Charlotte is not taking a position and
7 Katie with some reservation or even some latitude
8 opposes the continuance. John Kennedy, brother of the
9 victim, is not opposed to a continuance.

09:28AM 10 Ruth Kennedy, Virginia Carol Kennedy's
11 Mother, turned 86 in February of this year and although
12 her health is reasonably good, she's waited a long time
13 for this trial and her desire, that she wants this Court
14 to know about, is to maintain the September 7th trial
09:28AM 15 date. She wants -- her thinking is somewhat along the
16 line of Katie. She wants to see this come to an end and
17 their position is -- Katie and Ruth Kennedy's position
18 is to hold the trial date and finish this case as soon
19 as possible.

09:29AM 20 So that would be the victims' view point.
21 Basically, two are for and two are okay with a
22 continuance. Two are for. Two are against the
23 continuance. Two are for or have no objection to it.

24 MR. WILLIAMS: Judge, I believe that
09:29AM 25 Charlotte just arrived.

1 MR. PAUPORE: Oh, I'm sorry.

2 MR. WILLIAMS: Have you seen this?

3 (Whereupon, Mr. Paupore and Mr. Williams
4 confer off the record.)

09:29AM 5 MR. WILLIAMS: Can I approach?

6 THE COURT: The State doesn't have any
7 objection?

8 MR. PAUPORE: No objection, Your Honor.

9 THE COURT: Is this the letter?

09:29AM 10 MR. PAUPORE: Yes.

11 THE COURT: I did not see the letter from
12 yesterday. So --

13 (Whereupon, Mr. Paupore, Mr. Young and
14 Mr. Williams confer off the record.)

09:31AM 15 THE COURT: I've reviewed Katherine
16 DeMocker's August 11th, 2011, letter. I'm going to have
17 it attached to the minute entry for today's hearing. I
18 don't see anything in there that I would consider that
19 would need to be confidential.

09:32AM 20 Anybody have any position regarding that?

21 MR. WILLIAMS: I do not have any opposition
22 to you attaching it.

23 MR. PAUPORE: Your Honor, I don't have --
24 the State does not have a position, but I would request
09:32AM 25 that Katie's attorney have input --

1 MR. WILLIAMS: Oh.

2 MR. PAUPORE: -- as to whether she wants
3 that attached to a minute entry and I don't know if she
4 does or not, but because she is represented by counsel
09:32AM 5 and counsel is not here, I am not going to speak to that
6 on that issue.

7 THE COURT: I appreciate that request.

8 MR. WILLIAMS: I think she's available
9 telephonically if you want to get --

09:32AM 10 THE COURT: I don't see anything in here
11 that I believe warrants -- if I've considered it, it's
12 part of the file at this point, and I don't see anything
13 confidential in here. I realize that she might want to
14 have some control over how it's ultimately disseminated
09:32AM 15 but we've fought those fights for a long time at this
16 point.

17 So I'm going to have it attached to the
18 minute entry. You may advise her attorney. The minute
19 entry probably won't go out with copies of this until
09:33AM 20 probably Monday. So if she's got something she wants to
21 get filed with the Court we need to get it filed to me
22 by the close of business today.

23 MR. PAUPORE: We'll let counsel know that,
24 Your Honor, and give her position as soon as this
09:33AM 25 hearing is over. I've also been advised that Charlotte

1 DeMocker is here and she's prepared to address the Court
2 if the Court would like.

3 THE COURT: Have you had a chance to fill
4 her in or somebody filled her in as to the status of our
09:33AM 5 conversation so far?

6 MR. WILLIAMS: I don't believe so. I think
7 we should probably -- she's also represented by an
8 attorney so I think that we need to contact that
9 attorney and talk to them about that too.

09:33AM 10 MR. PAUPORE: And the State has not had an
11 opportunity to talk to Charlotte other than through
12 counsel.

13 THE COURT: Miss DeMocker, let me just tell
14 you that we've been discussing the possible reassignment
09:34AM 15 of this case, the Defendant's Motion to Continue, where
16 we are in that process, as well as a settlement
17 Conference, possibly scheduled with a visiting Judge
18 that may have to come up to speed on the case, but would
19 not have been involved in the case previously. Maybe a
09:34AM 20 fresh set of eyes and I recognize that you're
21 represented by counsel and you're here today.

22 Is there anything that you want to tell me
23 on any of those issues?

24 MS. CHARLOTTE DEMOCKER: Thank you, Your
09:34AM 25 Honor. I know that my representation has already spoken

1 for me or I assume that's what happened. I don't really
2 have an objection to a continuance and I take no real
3 stance on the reassignment and, I'm sorry, can you
4 repeat the last motion to be addressed?

09:35AM 5 THE COURT: A settlement conference,
6 potential settlement conference with another Judge.

7 MS. CHARLOTTE DEMOCKER: I don't have any
8 objection to settlement talks. I would request that I
9 be informed and kept up-to-date as to what happens with
09:35AM 10 those as the victim.

11 THE COURT: You would have a right to be
12 present, absolutely, and you would also have a right to
13 be notified of that -- of those hearings.

14 MS. CHARLOTTE DEMOCKER: Thank you, Your
09:35AM 15 Honor.

16 THE COURT: Thank you.

17 MR. WILLIAMS: Judge, I have a suggestion on
18 that. I've discussed it with the State and without
19 waiving any of the issues that we've raised in our
09:35AM 20 motions I would propose that we schedule a 17.4
21 Conference first and if whatever Judge is going to do
22 that conference, the whole time we could come up to
23 speed, because I do think that settlement conferences
24 are always good to have, and then we can agree to
09:35AM 25 continue working on the case and the State doesn't --

1 again, without us waiving any of the issues that we've
2 raised.

3 MR. PARZYCH: Could I -- is it okay?

4 MR. WILLIAMS: Yeah.

09:36AM 5 MR. PARZYCH: Judge, may I?

6 THE COURT: Yes.

7 MR. PARZYCH: And Mr. DeMocker and I, as
8 everybody else has been talking, were talking. What --
9 Mr. DeMocker has no objection to vacating that current
09:36AM 10 trial date. As we see it that settlement conference, if
11 that can happen as quickly as possible, whether it be an
12 outside Judge or this Court hears it, once that
13 settlement conference is over, if that Motion to
14 Disqualify, the Motion to Dismiss can be ruled on
09:36AM 15 shortly after or even be ruled on prior to the
16 settlement conference but not disclosed to either party
17 until after that settlement conference if it doesn't
18 resolve itself. We suspect that will go a long way in
19 how this case is resolved.

09:36AM 20 If the settlement conference doesn't
21 resolve, the motions then ruled upon, then the flurry of
22 Special Actions can start from that, from the ruling on
23 that motion. At this point we think just to keep the
24 current trial date or set a new one really is an act of
09:37AM 25 futility in itself and, again, Mr. DeMocker agrees with

1 that from the Defense perspective.

2 THE COURT: Okay. I'm not going to be
3 ruling on the pending motions today, but I understand.
4 I asked for input and that's the kind of input that I
09:37AM 5 want to evaluate what I need to do as Presiding Judge
6 with respect to the judicial assignment as well as
7 arranging to bring somebody in.

8 MR. PARZYCH: And if I may --

9 THE COURT: I just want to make that clear.

09:37AM 10 MR. PARZYCH: -- we're not asking for
11 anybody to rule on that motion. In fact, we're asking
12 that let's have that 17.4 Settlement Conference prior to
13 that ruling. I think that helps in that settlement
14 conference and a question that I have -- and I don't
09:37AM 15 know, the parties may know -- is it this Court that will
16 be ruling on the Motion to Dismiss or Disqualify or is
17 that --

18 THE COURT: Right now those motions are
19 before the assigned Judge.

(09:38AM 20 MR. PARZYCH: All right.

21 THE COURT: The only thing that I'm doing
22 today is, I thought, given the history of this case, if
23 I was considering a reassignment and I was considering a
24 17.4 in trying to bring somebody in from out of county
09 9AM 09:38AM 25 for that it would be reasonable to get together with

1 everybody and hear everybody's positions and discuss the
2 options.

3 I certainly had some options in mind before
4 Monday or when I set this hearing before I saw the
09:38AM 5 flurry from Monday, that changed things greatly.

6 I'm not certain that Judge Darrow was up to
7 speed on the discussions that may have gone on between
8 the Defense and the State about there's going to be
9 Special Actions on either side so the trial date's
09:38AM 10 unrealistic. I mean, he has gone forward. We've
11 summoned a substantial jury pool and maybe I'm mistaken,
12 but I certainly wish he would have been in on that --

13 MR. WILLIAMS: Oh, we said --

14 THE COURT: -- part of the discussion.

09:39AM 15 MR. WILLIAMS: We said that. We have
16 records of that. We weren't threatening anybody when we
17 said that.

18 THE COURT: No, I wasn't taking it as
19 threatening, but if that's --

09:39AM 20 MR. PARZYCH: But from my perspective I
21 think that a 17.4 is the first and foremost. In fact,
22 that should occur.

23 THE COURT: Understood. I appreciate that.

24 MR. WILLIAMS: I think that Mr. Paupore
09:39AM 25 raised a good point and that is that I think that Judge

1 Darrow has said that he's -- he was uncomfortable taking
2 things kind of out of order with the elephant in the
3 room, which was the Motion to Dismiss, Motion to
4 Disqualify, and I think he was hoping to follow forward
09:39AM 5 with some of the juror questionnaires, get the State and
6 Defense working on them.

7 We had agreed to meet and try to eliminate
8 who we could eliminate ahead of time before we got to
9 work and then Judge Darrow scheduled a hearing on the
09:39AM 10 25th and 26th of August to meet on the jury
11 questionnaires but he did acknowledge that it was
12 awkward to be talking about this kind of stuff when we
13 had this huge motion in abeyance.

14 So I don't think that he would be surprised
09:40AM 15 that -- of the reaction on either side to dispute the
16 ruling.

17 THE COURT: Well, as I indicated my initial
18 purpose in setting this hearing, one of the initial
19 purposes was to see if we could come to an agreement on
09:41AM 20 reassignment to another Judge.

21 I understand from the positions that have
22 been stated that that's highly unlikely and realize that
23 it was highly unlikely when I set this hearing, but
24 certainly wanted to give that a chance.

09:41AM 25 I think that counsel realizes, and I could

1 go through the list of available judges in Yavapai
2 County to hear this matter, but it's certainly limited
3 in light of some of the past experiences and involvement
4 in other aspects of the case as well as family members
09:41AM 5 involved in offices on various side of the issues -- on
6 various sides of the case.

7 I was really coming down to three potential
8 judges that could continue to hear this matter. One was
9 Judge Darrow, one was myself, and one was Judge Bluff,
09:42AM 10 and from that group I was hoping that we might be able
11 to come up with an agreement.

12 I'm going to give counsel an opportunity --
13 I'm going to take a brief recess and give counsel an
14 opportunity to consult with -- among themselves and
09:42AM 15 Defense counsel with Mr. DeMocker and see whether or not
16 they may be -- we may be able to move forward on an
17 agreement with respect to a reassignment, but before I
18 do that, I'd like to see counsel at the bench -- at the
19 side-bar off the record.

09:43AM 20 (Whereupon, proceedings were held with
21 the Court and counsel at side-bar
22 off the record.)

23 THE COURT: Mr. Mercer.

24 (Whereupon, proceedings were held with
09:53AM 25 the Court, counsel, and the Bailiff at

1 side-bar off the record.)

2 THE COURT: We're going to take a brief
3 recess to allow counsel to talk -- Defense counsel to
4 talk with their client as well as the State's counsel to
09:56AM 5 discuss this matter further.

6 If you'd notify my Bailiff when everybody is
7 ready to get back together.

8 We're in recess.

9 (Whereupon, a break was taken.)

10:42AM 10 THE COURT: Back in Court with counsel and
11 Mr. DeMocker. I had a chance to talk with counsel at
12 the side-bar. They had a chance to discuss this matter
13 amongst themselves. Also had a chance to meet with
14 counsel in chambers off the record.

10:42AM 15 It's my understanding at this point that the
16 Defendant wishes to preserve his objection to a
17 reassignment from Judge Darrow, however, if there is a
18 reassignment, the Defendant and the State would
19 stipulate to this Court taking the case and that they
10:43AM 20 would stipulate to this Court also conducting a 17.4
21 Settlement Conference, waive any issues with respect to
22 the Judge trying the case also conducting the 17.4.

23 There were also some other issues that I'm
24 not going to go into detail today, but that the parties
10:43AM 25 indicated that there's a willingness to waive if this

1 Court is involved in the case.

2 Again, I've told counsel that I'm not making
3 the decision on that today. I have to weigh all of the
4 options including the option of keeping Judge Darrow
10:43AM 5 assigned to this case and moving forward. I think that
6 we all get the message loud and clear that the September
7 trial date is not realistic, but let me go back before I
8 get too far from what I indicated was my understanding
9 of the general agreement and make sure that I've stated
10:44AM 10 that correctly.

11 Mr. Williams, have I stated that correctly?

12 MR. WILLIAMS: Yes, Judge. Thank you.

13 THE COURT: Mr. Paupore?

14 MR. PAUPORE: Yes, Your Honor.

10:44AM 15 THE COURT: Anything else either counsel
16 wants to tell me for the record before we adjourn today,
17 and I did tell counsel that I will get a decision to you
18 on the potential reassignment as soon as possible as
19 well as a settlement conference as soon as possible.

10:44AM 20 MR. PAUPORE: Nothing further from the
21 State, Your Honor. Thank you.

22 MR. WILLIAMS: I don't have anything further
23 other than request permission to have a few minutes with
24 Mr. DeMocker in the jury room after we're done just to
10:44AM 25 discuss what's happening.

1 THE COURT: The hearing was set until 11
2 o'clock. Any issue with having him finishing it up by
3 about that time?

4 MR. WILLIAMS: Yes.

10:44AM 5 THE COURT: I don't think that I'm inclined
6 to have the Detention Officers stay here through the
7 lunch hour is what I'm saying.

8 MR. WILLIAMS: No, no. It wouldn't take us
9 very long. I just want to discuss what we talked about.

10:45AM 10 THE COURT: Any issue with a few more
11 minutes in the conference room?

12 THE DETENTION OFFICER: No, Your Honor.

13 THE COURT: Again, you understand I'm not
14 telling them that they have the rest of the day here.

10:45AM 15 So the rest of the schedule after I adjourn is up to
16 you.

17 THE DETENTION OFFICER: That's fine.

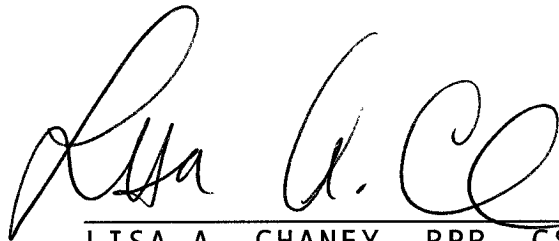
18 THE COURT: All right. We're adjourned.

19 (Whereupon, the proceedings were concluded.)
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1 STATE OF ARIZONA)
2 COUNTY OF YAVAPAI)

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4 I, Lisa A. Chaney, a Certified Reporter, in
5 the State of Arizona, do hereby certify that the
6 proceedings had in the foregoing entitled matter are
7 contained fully and accurately in the shorthand record
8 made by me thereof, and that the following pages
9 constitute a full, true and accurate transcript of the
10 said shorthand record, all done to the best of my skill
11 and ability.

12 DATED this 3rd of October, 2011.
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22 LISA A. CHANEY, RPR, CSR, CR
23 Certified Reporter
24 Certificate No. 50801
25